

Chapter 6

ALCOHOL BEVERAGES¹

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ARTICLE I. IN GENERAL

Division 1 – Generally

Sec. 6-1. Adoption of state law.

The provisions of Wis. Stats. ch. 125 defining, describing and regulating the sale, procurement, dispensing, consumption and transfer of alcohol beverages, including provisions relating to underage persons, are adopted and made a part of this section by reference. Violation of any such provisions shall constitute a violation of this section. Penalties for violations by or relating to sale, procurement, dispensing or transfer to underage persons shall strictly conform to the penalties imposed for violations of identical offenses defined and described in Wis. Stats. ch. 125, adopted in this section. (Code 1986, § 12.04(1))

Sec. 6-2. Regulations pertaining to licensed premises.

- (a) *Unlawful or disorderly conduct prohibited.* Premises licensed under this chapter shall, at all times, be conducted in an orderly manner, and no unlawful conduct, either under municipal ordinance or state law, shall be allowed at any time on any licensed premises.
- (b) *Sales by clubs.* No club shall sell intoxicating liquors or fermented malt beverages except to members and guests invited by members.
- (c) *Payment of state liquor taxes.* No licensee shall possess or sell or offer for sale any intoxicating liquor upon which the state tax established by Wis. Stats. ch. 139 has not been paid.
- (d) *Dancing.* No dancing by patrons or entertainers shall be permitted on premises for which a class "A" license has been granted.
- (e) *Sale of commodities other than alcohol beverages.*
 - (1) No holder of a class "B" liquor license shall sell any commodity other than such commodities as such "class B" liquor and class "B" fermented malt beverages license permits; provided the holder of such license may also sell tobacco for retail use and smoking accessories. No holder of a "class B" liquor license shall conduct any other business except pool, billiards or a bowling alley in the premises for which such license is granted.
 - (2) This subsection shall not apply to restaurants or hotels, which may sell or dispose of food under their restaurant or hotel licenses.
- (f) *Closing hours.* No premises for which a retail liquor or fermented malt beverage license has been issued shall remain open nor shall any intoxicating liquor or fermented malt beverages be sold or dispensed:
 - (1) *Class A license.* If a class A license, between 9:00 p.m. Saturday evening and 6:00 a.m. on Sunday, and on weekdays between 9:00 p.m. and 6:00 a.m. the next day, provided this subsection shall not prohibit drugstores holding such class A license from

remaining open on Sundays and beyond the hours set forth in this subsection for the conduct of business other than that provided for by such class A license.

(2) *Class B license.*

a. If a class B license, on Saturdays and Sundays between 2:30 a.m. and 6:00 a.m., and on weekdays between 2:00 a.m. and 6:00 a.m. On January 1, premises operating under a class B license are not required to close. No package, container or bottle sales may be made after midnight.

b. This subsection shall not prohibit restaurants, bowling alleys or similar establishments holding class B licenses from remaining open beyond the hours set forth for the conduct of business other than that provided for by such class B license.

(3) *Christmas Eve.* No person having a class A license shall sell or dispense liquor or fermented malt beverages after 6:00 p.m. on Christmas Eve.

(g) *Violations by agents or employees.* A violation of this section, section 6-1, or article II, division 1 of this chapter by an authorized agent or employee of a licensee shall constitute a violation by the licensee.

(Code 1986, § 12.04(12)(a), (c), (e)--(g), (13), (18), Ord 2012-23)

Sec. 6-3. Consumption in public place.

No person shall drink or carry for the purpose of immediate consumption in any container an alcohol beverage upon the streets, sidewalks, parks, public parking lots, public buildings or public school property within the city.

(Code 1986, § 9.17(1), (2)(a))

Division 2 – Hosting Gatherings Involving Underage Possession and Consumption of Alcohol

Sec 6-4 Purpose and Finding. The City Council of the City of Evansville, Wisconsin intends to discourage underage possession and consumption of alcohol, even if done within the confines of a private residence, and intends to hold persons civilly responsible who host events or gatherings where persons under 21 years of age possess or consume alcohol or consume alcohol regardless of whether the person hosting the event or gathering supplied the alcohol. The City Council of Evansville finds:

Events and gatherings held on private or public property where alcohol is possessed or consumed by persons under the age of twenty-one are harmful to those persons and constitute a potential threat to public health requiring prevention or abatement.

Prohibiting hosting underage consumption acts to protect underage persons, as well as the general public, from injuries related to alcohol consumption, such as alcohol overdose or alcohol-related traffic collisions.

Alcohol is an addictive drug which, when used irresponsibly, does have drastic effects on those who use it as well as those who are affected by the actions of an irresponsible user.

Often, events or gatherings involving underage possession and consumption occur outside the presence of parents. However, there are times when the parent(s) is/are present and condone the activity, and in some circumstances, provide the alcohol.

A deterrent effect is created by holding a person responsible for hosting an event or gathering where underage possession or consumption occurs.

[Ord. 2012-17]

Sec 6-5 Definitions. For purposes of this division, the following terms have the following meanings:

- (a) **Alcohol.** "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, whiskey, rum, brandy, gin or any other distilled spirits including dilutions and mixtures thereof from whatever source or by whatever process produced.
- (b) **Alcoholic Beverage.** "Alcoholic Beverage" means alcohol, spirits, liquor, wine, beer and every liquid or solid containing alcohol, spirits, wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances.
- (c) **Event or Gathering.** "Event or Gathering" means any group of two or more persons who have assembled or gathered together for a social occasion or other activity.
- (d) **Host or Allow.** "Host" or "Allow" means to aid, conduct, entertain, organize, supervise, control or permit a gathering or event.
- (e) **Parent.** "Parent" means any person having legal custody of a juvenile:
 - As natural, adoptive parent or step-parent
 - As a legal guardian; or
 - As a person to whom legal custody has been given by order of the Court
- (f) **Residence, Premises or Public or Private Property.** "Residence", "Premises", or "Public or Private Property" means any home, yard, farm, field, land, apartment, condominium, hotel or motel room or other dwelling unit, or a hall or meeting room, park or any other place of assembly, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, and whether owned, leased, rented or used with or without permission or compensation.
- (g) **Underage Person.** "Underage Person" is any individual under twenty-one (21) years of age.
- (h) **Present.** "Present" means being at hand or in attendance.
- (i) **In Control.** "In control" means the power to direct, manage, oversee and/or restrict the affairs, business or assets of a person or entity.

[Ord. 2012-17]

Sec 6-6 Prohibited Acts. It is unlawful for any person(s) to: host or allow an event or gathering at any residence, premises or on any other private or public property where alcohol or alcoholic beverages are present when the person knows that an underage person will or does (i) consume any alcohol or alcoholic beverage; or (ii) possess any alcohol or alcoholic beverage with the intent to consume it; and the person fails to take reasonable steps to prevent possession or consumption by the underage person(s).

(a) A person is in violation of this section if the person intentionally aids, advises, hires, counsels or conspires with or otherwise procures another to commit the prohibited act.

(b) A person who hosts an event or gathering does not have to be present at the event or gathering to be responsible.

[Ord. 2012-17]

Sec 6-7 Exceptions.

(a) This division does not apply in cases where a person procures for, sells, dispenses of or gives away alcohol beverage to an underage person in the direct company of his or her parent, guardian or spouse who has attained the legal drinking age, who has consented to the underage person acquiring or consuming the alcohol beverages and is in a position to observe and control the underage person.

(b) This division does not apply to legally protected religious observances.

(c) This division does not apply to situations where underage persons are lawfully in possession of alcohol or alcoholic beverages during the course and scope of employment.

[Ord. 2012-17]

Sec 6-8 Penalties. A person who violates any provision of this section must appear in municipal court and is subject to a forfeiture of not less than \$750 nor more than \$5,000, together with the costs of prosecution.

[Ord. 2012-17]

Secs. 6-9--6-30. Reserved.

ARTICLE II. LICENSES AND PERMITS

DIVISION 1. GENERALLY

Sec. 6-31. License required; compliance with applicable regulations.

No person, except as provided by Wis. Stats. § 125.06, shall distribute, vend, sell, offer or keep for sale at retail or wholesale, deal or traffic in or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage, or cause such acts to be done, without having procured a license as provided in this division, and without complying with all the provisions of this division and all statutes, ordinances and regulations of the state and city applicable thereto.

(Code 1986, § 12.04(3)(a))

Sec. 6-32. License classes and fees.

There shall be the following classes and denominations of licenses which, when issued by the city clerk-treasurer under the authority of the city council after payment of the fee as established by the council from time to time by resolution and as set forth in appendix A, shall permit the holder to sell, deal or traffic in alcohol beverages as provided in Wis. Stats. §§ 125.17, 125.25, 125.26, 125.28, 125.32 and 125.51. Except as otherwise provided in this division, the full license fee shall be charged for the whole

or fraction of any year. License fees shall be in addition to any fees for other licenses required by city ordinance or state law.

- (1) Class "A" fermented malt beverage retailer's license.
- (2) Class "B" fermented malt beverage retailer's license.
- (3) Operator's license.
- (4) Retail "class A" liquor license.
- (5) Retail "class B" liquor license.

a. *Refund.* If a person holding a "class B" liquor license is inducted into the armed services of the United States during a war, his prorated unused license fee may be refunded or such fee may be used by his successor.

b. *Description.* A retail "class B" liquor license shall permit its holder to sell, deal and traffic in intoxicating liquors to be consumed on the premises so licensed by glass only and not in the original package or container. The term "intoxicating liquor," as used in this subsection, includes wine, which shall not be sold in the original package or otherwise in any quantity to be consumed off the premises. The holder of a "class B" liquor license shall not sell any liquor from containers smaller than one-fifth of a gallon.

(6) *"Class C" wine license.* A "class C" license authorizes the retail sale of wine by the glass or in an opened original container for consumption on the premises where sold.

(Code 1986, § 12.04(4); Ord. No. 2000-21, § 1, 1-9-2001)

Sec. 6-33. Applications to be notarized.

Applications for liquor licenses under this division shall be signed and sworn to by the applicant as provided by Wis. Stats. § 887.01.

(Code 1986, § 12.04(5)(b))

Sec. 6-34. Filing of list of licensees with state department of revenue.

By July 15 of each year, the clerk-treasurer shall forward to the state department of revenue a list containing the name, address and trade name of each person holding a license issued under this division, except a picnic, manager's or operator's license.

(Code 1986, § 12.04(5)(d))

Sec. 6-35. Consent of applicant to future regulations and amendments.

By filing his application for a class A, B or C license under this division, the applicant consents that the council may make any rule or regulation or alteration or amendment to this chapter at any time during the period for which such license is granted.

(Code 1986, § 12.04(5)(e)1)

Sec. 6-36. Restrictions on issuance of class A licenses.

(a) The number of "class A" intoxicating liquor licenses which may be issued to persons or premises in the city is limited to one for each seven-hundred (700) population in the city as defined by Wis. Stats. § 125.51(4). An application for a "class A" liquor license shall not be favored or disfavored because the applicant already has been granted a class "A" fermented malt beverage license.

(b) A class "A" fermented malt beverage license may be granted separately from or in conjunction with a granting of a "class A" intoxicating liquor license. The number of class "A" fermented malt beverage licenses the city may issue is subject only to the applicable limit under state law, if any.

(Code 1986, § 12.04(5)(e)2, 3, Ord. 2006-7, Ord. 2012-11)

Sec. 6-37. Standards for issuance; license quota for class B licenses.

(a) *Location of premises.*

(1) No retail class A or B license shall be issued for premises the main entrance of which is less than 300 feet from the main entrance of any established public school, parochial school, hospital or church, except that this prohibition may be waived by a majority vote of the common council. Such distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school, church or hospital to the main entrance of such premises.

(2) This subsection shall not apply to premises licensed as such on June 30, 1947, nor shall it apply to any premises licensed as such prior to the occupation of real property within 300 feet thereof by any school, hospital or church building.

(3) This subsection shall not apply to a restaurant located within 300 feet of a church or school. This paragraph applies only to restaurants in which the sale of alcohol beverages accounts for less than 50 percent of their gross receipts.

(b) *Issuance to violators of liquor, beer or wine laws or ordinances.* No retail class A, B or C license shall be issued to any person who has been convicted of a violation of any federal or state liquor or fermented malt beverage law or wine law or the provisions of this division, section 6-1 or section 6-2 during one year prior to such application. A conviction of a member of a partnership or the partnership itself shall make the partnership or any member thereof ineligible for such license for one year.

(c) *Health, safety and sanitation requirements.* No retail class A, B or C license shall be issued for any premises which do not conform to the sanitary, safety and health requirements of the state department of industry, labor and human relations pertaining to buildings and plumbing, to the rules and regulations of the state department of health and family services applicable to restaurants, and all such ordinances and regulations adopted by the city.

(d) *License quota.*

(1) *Class "B" fermented malt beverages license.*

a. The number of persons and places that may be granted a class "B" fermented malt beverage license under this division is limited to one for each 400 population in the city, as defined by Wis. Stats. § 125.51(4).

b. The city council may grant a class "B" fermented malt beverage license, as defined in Wis. Stats. ch. 125, to any restaurant that will agree in writing to the following conditions:

1. Fermented malt beverages will only be served for consumption on the premises (no carryouts).
2. Fermented malt beverages will not be served in the original containers.
3. Fermented malt beverages will only be served in open containers.
4. Fermented malt beverages will only be served with food.

The council may at any time add conditions to this agreement as it deems necessary for the health, welfare or safety of the community. The council may waive any of these requirements.

(2) *"Class B" liquor license.* Only one "class B" liquor license shall be granted for each 500 population in the city as defined by Wis. Stats. § 125.51(4).

(3) *Exceptions.* Nothing contained in this subsection shall prevent a license being granted to any person or the assignee of any person holding a "class B" liquor license on May 10, 1977; nor shall anything contained in this subsection prevent the council, in its discretion, from granting a license to any person who otherwise qualifies therefor according to Wis. Stats. § 125.51(4)(g), or from granting a class "B" fermented malt beverage license to a bona fide club, as defined in Wis. Stats. § 125.02(4), which has existed in the city for not less than six years and has been incorporated in the state for not less than 30 years, if sale or service of fermented malt beverages is restricted to club members, members of affiliated clubs and guests of either in a separate room which is locked during closing hours and no carryout sales are made.

(4) *"Class C" wine license.* The city council may grant a "class C" wine license, as defined in Wis. Stats. § 125.51(3m), without quota, to any restaurant that will agree in writing to the following conditions:

a. Sale of wine shall only be by the glass or in an open original container for consumption on the premises where sold.

b. The person shall be qualified under Wis. Stats. § 125.04(5) for a restaurant in which the sale of alcohol beverages accounts for less than 50 percent of gross receipts and which does not have a barroom if the city's quota under subsection (d)(2) of this section and Wis. Stats. § 125.51(4) prohibits the city from issuing a "class B" liquor license to that person.

c. The license may not be issued to a foreign corporation, a foreign limited liability company or a person acting as an agent for or in the employ of another.

d. The license shall particularly describe the premises for which it is issued.

The council may not waive at any time any of these requirements as they are by state statute, and the requirements may be amended by state statute from time to time.

(e) *Payment of delinquent taxes, assessments and claims.* No license shall be initially granted or renewed to any person or applicant who, or premises for which, municipal taxes, assessments, or overdue ordinance violation forfeitures due the City are delinquent and unpaid. When this section applies to an initial application for a license, the person or applicant shall be given notice of the intent to not issue the license and an opportunity to rebut the assertion of unpaid obligations. If this section is invoked upon a person or applicant request for renewal, the notice and opportunity for hearing provisions of Section 125.12(3) of the Wisconsin Statutes shall apply.

(f) *Residences not to be licensed.* No license shall be issued for the purpose of possessing, selling or offering for sale any intoxicating liquor or fermented malt beverage in any dwelling house, flat or residential apartment.

(Code 1986, § 12.04(6); Ord. No. 2003-13, § 1, 11-11-2003, Ord. 2006-39)

Sec. 6-38. Investigation and inspection.

(a) The city clerk-treasurer shall notify the chief of police, fire chief and building inspector of each application for a license under this division, and those officials shall inspect or cause to be inspected each application and the premises, together with any other investigations, accompanied by a recommendation as to whether a license should be granted or refused.

(b) In determining the suitability of any applicant, consideration shall be given to the financial responsibility of the applicant, the appropriateness of the location and the premises proposed and, generally, the applicant's fitness for the trust to be reposed.

(c) No license shall be renewed without a reinspection of the premises and reports as originally required.

(Code 1986, § 12.04(7))

Sec. 6-39. Procedure for issuance.

(a) *Generally.* Opportunity shall be given by the council to any person to be heard for or against the granting of any license under this division. Upon approval of the application by the council, the city clerk-treasurer shall file a receipt showing the payment of the required license fee and issue a license to the applicant.

(b) *Operator's license.* For provisions pertaining to operator's licenses, see section 6-45.

(c) *Picnic license.* For provisions pertaining to picnic licenses, see section 6-44.

(Code 1986, § 12.04(8))

Sec. 6-40. Contents.

All licenses issued under this division shall be numbered in the order in which they are issued and shall state clearly the specific premises for which granted, the date of issuance, the fee paid and the name of the licensee.
(Code 1986, § 12.04(9)(a))

Sec. 6-41. Loss of rights on abandonment of business.

Any person holding a class B license under this division who abandons such business shall forfeit any right or preference he may have had to the holding and renewal of such license. The closing of such premises for 15 days or more shall be prima facie an abandonment.
(Code 1986, § 12.04(9)(b))

Sec. 6-42. Unlawful use of license; defacing, destroying or removing license.

No person shall post a license issued under this division or permit any other person to post it upon premises other than those mentioned in the application, or knowingly deface or destroy such license, or remove such license without the consent of the holder thereof.
(Code 1986, § 12.04(11)(a))

Sec. 6-43. Duplicate license.

Whenever a license issued under this division is lost or destroyed without fault on the part of the holder or his agent or employee, a duplicate in lieu thereof under the original application shall be issued by the city clerk-treasurer on satisfaction given as to the facts and upon payment of a fee as established by the council from time to time by resolution and as set forth in appendix A.
(Code 1986, § 12.04(11)(b))

Sec. 6-44. Temporary class "B" (picnic) beer license or temporary "class B" (picnic) wine license.

Picnic licenses may be issued by the council or the public safety committee under Wis. Stats. § 125.26(6). Application therefor shall be filed at least 30 days prior to the date such license is intended to be used, but applications may be accepted within such 30-day period if the applicant agrees in writing to pay the cost of any special meeting of the council or the committee called for the purpose of acting upon such application.
(Code 1986, § 12.04(14))

Sec. 6-45. Operator's license.

(a) *Regular.* Application for an operator's license under § 125.17, Wis. Stats., shall state the name, residence, age, birthdate, and sex of the applicant, together with such other pertinent information as the city clerk requires, and shall be issued by the clerk for a period of no longer than two years to the renewal date of June 30, upon approval by the public safety committee.

(b) *Provisional license.*

(1) Application for a provisional operator's license under Wis. Stats. § 125.17(5) shall be made to the city clerk-treasurer and shall state the name, residence, age, birthdate and sex of the applicant, together with such other pertinent information as the city clerk-treasurer requires. The provisional license shall be issued by the city clerk-treasurer following approval by the chief of police or the chairperson of the public safety committee.

(2) A provisional license may be issued only to a person who has applied for an operator's license under this section. The provisional license shall expire 60 days after its issuance or when the operator's license is issued, whichever is sooner.

(3) The public safety committee may revoke the provisional license if it discovers that the holder of the provisional license made a false statement on the application for a provisional license or a regular operator's license.

(4) The provisions of Wis. Stats. § 125.17(5) are hereby adopted in their entirety, and any conflict between this section and that statute as it may exist from time to time shall be resolved in favor of the statutory provision.

(Code 1986, § 12.04(15); Ord. No. 1999-10, § 1, 7-13-1999; Ord. No. 2000-21, § 2, 1-9-2001)

Secs. 6-46--6-60. Reserved.

DIVISION 2. PERMIT FOR CONSUMPTION IN PUBLIC PARKS²

Sec. 6-61. Consumption of certain beverages authorized; permit required.

Notwithstanding section 6-3(b), persons of legal drinking age may carry for purposes of immediate consumption, or to consume in moderation, a fermented malt beverage or wine cooler, but not an intoxicating liquor or wine, in limited areas within the boundaries of the public parks of the city, provided a permit for such carrying or consumption has first been obtained pursuant to section 6-63.

(Code 1986, § 9-17(2)(b); Ord. No. 1999-5, § 1, 5-11-1999)

Sec. 6-62. Consumption or possession prohibited in certain areas.

The areas in public parks where fermented malt beverages or wine coolers may be carried and/or consumed do not include recognized playground areas, the swimming pool area and building, or areas in and around the park store building. When organized scheduled softball is being played, carrying and consumption is prohibited beyond the roadway circling the field.

(Ord. No. 1999-5, § 2, 5-11-1999)

Sec. 6-63. Eligibility; application; issuance.

(a) *Eligibility.* Eligible permit holders under this division are limited to residents of the city or the Evansville School District; persons who own real estate in the city or school district; recognized organizations, including sport leagues, the majority of whose members are residents of the city or school district; or companies having the city or school district as the company's principal place of business.

(b) *Form of application.* Applications shall be in a form determined and provided by the city clerk-treasurer, to include the name, address, telephone number and date of birth of the applicant, the date for which the permit is desired, and the approximate number of persons in the party. The clerk-treasurer may require such additional information about the applicant as the clerk-treasurer deems necessary. The permit form shall be as provided by the clerk-treasurer.

(c) *Filing of application; scope of permit.* Applications shall be made in person by the applicant at least 48 hours in advance of the date for which the permit is requested. Organizations may in one application obtain a permit for each event date or league play date, paying the permit fee required for each date. The permit shall extend to all members of the applicant's immediate party of legal drinking age. The permit shall be valid for only one calendar date, which date will be specified thereon.

² **Cross references:** Parks and recreation, ch. 86.

(d) *Fee.* The fee for each permit shall be as established by the council from time to time by resolution and as set forth in appendix A. The fee shall be payable at the time of application, and is not refundable.

(e) *Deposit.* Applications shall require the payment of a refundable deposit of \$100.00, which will be used to compensate the city for any damage to property or cost of cleanup of park buildings or areas caused by the applicant's use under the permit. Within two days after the event date, the municipal services superintendent shall advise the clerk-treasurer if any portion of the deposit should be retained by the city. Any balance will be refunded to the applicant. Organizations making application for more than one event date shall pay only one deposit at the time of application for all dates, but the city shall hold the deposit until after the last event date. The city may require additional deposits, if the city retains for damages or cleanup the \$100.00 initial deposit.

(f) *Issuance.* The clerk-treasurer or his deputy shall issue permits according to the requirements of this division, and may refuse to grant a permit if the applicant incompletely or falsely prepares the application or the applicant has violated terms of a permit or alcohol law at any prior time. An organization may have permits for remaining unused dates revoked if there is violation of a prior permit date or any federal, state, county or city alcohol law.

(Ord. No. 1999-5, § 3, 5-11-1999, Ord. 2014-02)

Sec. 6-64. Sales prohibited; exception.

Nothing in this division permits the sale to anyone, including members of the applicant's own party, of fermented malt beverages or wine coolers. This division does not apply to consumption of fermented malt beverages or wine coolers on premises for which a license for sale of fermented malt beverages or wine coolers has been issued for a particular picnic or similar gathering pursuant to Wis. Stats. § 125.26(6).

(Ord. No. 1999-5, § 4, 5-11-1999)